

Claim 8 has been requested to be cancelled. Claims 1, 7, 9, and 10 have been amended.

No new matter has been entered with these amendments.

The Office Action Summary, Form PTO-326, states that claims 2-5, 19-21 and 23-100 are withdrawn from consideration. The Examiner, however, states on page 2 of the Detailed Action that claims 2-5, 19-21 and 27-100 have been withdrawn from consideration. Applicants respectfully request that the Office records comply with the latter, not the former, status of the claims.

The Examiner rejected claims 1, 6-18, 22-26 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the Examiner stated a “planar surface” should not have an “upturned portion.” Claim 1 has been amended to remove this ambiguity and to overcome the Examiner’s rejection.

The Examiner also stated that the term “the plate” in claims 8 and 9 lacks proper antecedent basis. Applicants have amended claim 9 to provide the proper antecedent basis and overcome the Examiner’s rejection. Claim 8 has been requested to be cancelled. Claim 10 has been amended for the purposes of clarity in light of the amendment to claim 9.

The Examiner also rejected claim 1 under 35 USC 102(b) as being anticipated by Ferdinand et al. The Examiner states Ferdinand shows a planar shelf 142 with an upturned edge portion 178 and 194 and end caps 24.

Applicants respectfully submit that Ferdinand et al. does not teach or suggest, either implicitly or explicitly, “a barrier for containing spilled liquids to said shelf” as required by claim 1. Ferdinand et al. teaches a telescoping shelf assembly where a first

shelf slides over the top of a second shelf. The second shelf has two side rails which slide into side rails of the first shelf. Ferdinand et al. also teaches notches and openings (154, 156, 162, 160, 166, 168, 170, 172) in the shelving to attach the shelf to the shelf brackets.

The telescoping assembly and the numerous notches and openings in various portions of the shelf clearly do not teach a barrier for containing spilled liquids. Instead, the Ferdinand reference would allow any spilled liquid to quickly escape from the shelf through any of the following: through the notches and/or openings, through the interface of the first and second shelves and/or through the interface of the edge units. Regarding the interfaces for the first and second shelves and the edge units, the reference teaches one shelf must slide over the other, thus the shelves must be somewhat loosely joined. This loosely joined condition would likely not perform as a barrier for containing spilled liquid. Furthermore, nowhere in the Ferdinand reference is the ability of the shelf to contain a spilled liquid mentioned. Thus, applicants respectfully disagree with the Examiner that the Ferdinand reference teaches each claimed element of claim 1.

The Examiner also rejected claims 1, 6-18 and 22-26 under 35 USC 103(a) as being unpatentable over Kane et al in view of Thomas. Specifically, the Examiner stated Kane is cited for showing a glass plate shelf with end caps. The Examiner acknowledges that Kane fails to show a shelf with an upwardly turned portion. Thomas is cited by the Examiner to show a shelf having an upturned portion. Based upon Kane and Thomas, the Examiner stated it would have been obvious to one skilled in the art to modify Kane in view of Thomas to make the present invention.

Applicants respectfully disagree with the Examiner that the above combination of references establishes a prima facie case of obviousness since obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. ACS Hospital Systems, Inc. v. Montefiore Hospital, 723 F.2d 1572, 1577, 221 U.S.P.Q. (BNA) 929, 933 (Fed. Cir. 1984).

Specifically, the Kane reference only teaches end caps on a shelf where, in each embodiment, the end caps are located around the entire perimeter of the shelf. This is true even for the embodiment depicted in Fig. 35 of Kane where a perimeter edge is encapsulated with a perimeter rim 942 (see description at Column 11, lines 10-17). The Kane reference is silent regarding the location of end caps on anything less than the entire perimeter of the shelf. Furthermore, Kane is silent regarding any other structure to function as a barrier for spilled liquids either alone or in combination with the end caps. Thus, since Kane only teaches the use of end caps around the entire perimeter, one skilled in the art would not look to Kane and Thomas for a barrier including an upwardly turned portion integrally formed from the surface.

Conversely, the Thomas reference provides for a shelf having only an upturned edge portion around the entire perimeter. The Thomas reference is silent regarding any other structure to function as a barrier for spilled liquids either alone or in combination with the upturned edge portion. Thus, since Thomas only teaches the use of an upturned edge portion around the entire perimeter, one skilled in the art would not look to Thomas and Kane for a barrier for containing spilled liquids to the shelf where the barrier includes end caps located adjacent the upwardly turned portion to complete the barrier.

In sum, the combined teachings of the references cited do not suggest the elements of claim 1 to a person of ordinary skill in the art. In re Napier, 55 F.3d 610, 34 U.S.P.Q.2d (BNA) 1782 (Fed. Cir. 1995). Instead, as provided above, the cited references teach away from the present invention and thus a prima facie case of obviousness has not been established. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d (BNA) 1596 (Fed. Cir. 1988).

In light of the above discussion, applicants respectfully submit that claim 1 of the present invention is patentable over the cited references. Furthermore, claims 6-18 and 22-26 depend from claim 1, either directly or indirectly, and contain all of the limitations thereof. Therefore, because claim 1 is patentable and claims 6-18 and 22-26 depend from claim 1, applicants submit that claims 6-18 and 22-26 are patentable over Kane in view of Thomas.

In view of the above arguments and amendments, applicants believe the claims of record now define patentable subject matter over the art of record. Therefore, the application appears to be in condition for allowance. Accordingly, an early Notice of Allowance is respectfully requested.

Should the Examiner wish to modify any of the language of the claims,
applicant's attorney suggests a telephone interview in order to expedite the prosecution of
the application.

Respectfully submitted,



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Version With Markings to Show Changes Made

In the claims:

Please cancel claim 8.

Please amend the following claims:

1. (Amended) A shelf for containing liquids spilled thereon, comprising:

a shelf having a [substantially planar] surface; and

a barrier for containing spilled liquids to said shelf, said barrier including at least one upwardly turned portion integrally formed from said [planar] surface and end caps located adjacent said upwardly turned portion to complete said barrier.

7. (Amended) A shelf as defined in claim [5] 6, wherein said glass plate is a soda-lime-silicate glass plate.

9. (Amended) A shelf as defined in claim [1] 6, wherein two portions of [the] said glass plate [adjacent two different edges] are upwardly turned to create two barriers for spilled liquids.

10. (Amended) A shelf as defined in claim 9, wherein a portion of said glass plate adjacent said front edge is upwardly turned, and a portion of said plate adjacent said rear edge is upwardly turned.